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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,311	09/01/2006	Michael Schabbach	5727-200678	9313

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BARNES & THORNBURG LLP
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EXAMINER

SIEFKE, SAMUEL P

ART UNIT	PAPER NUMBER
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1797

NOTIFICATION DATE	DELIVERY MODE
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04/14/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

indocket@btlaw.com

Office Action Summary	Application No. 10/591,311	Applicant(s) SCHABBACH, MICHAEL	
	Examiner SAM P. SIEFKE	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 83-142 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 83-142 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 89 recites the limitation "the counter roll". There is insufficient antecedent basis for this limitation in the claim. The counter roll is not describe in any previous claims that this claim is dependent on.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 83-142 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 97/46887 (herein after Lundsgaard).

Lundsgaard discloses a handheld analysis device that comprises a drum magazine (fig 1, ref. 4) containing an analytic consumable (14) that is configured to receive the sample (fig. 4), an analysis sensor to which the analytic consumable may be supplied along a conveyance path (fig. 2d,2e,2f, ref. motor 22, conveyer belt 20), a

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drivable conveyance roll (fig. 2d,e,f) configured to grip the analytic consumable projecting out of the drum magazine (exit hole included) and into the conveyance path and to move the gripped analytic consumable along the conveyance path, and a housing (fig. 2c) containing the drum magazine, the analysis sensor and the drivable conveyance roll. The Examiner states that the conveyor grips the analytical consumable (14) because of gravity and the friction created between the conveyor and the consumable (fig 1). The conveyance surface separate from the drivable conveyance roll would be any surface that does not touch the drivable conveyance roll. In this instant case, figure 3 and figure 2d show the path in which the analytical consumable passes and then exits the device. For instance the surface directly to the left of the drum 4 which appears to be the cover housing for the buttons and display, this surface can be a conveyance surface because it helps guide the analytical consumable to the exit. Without the top surface and two side surfaces the consumable gripped by the conveyor would not be held in an upright position. So it is the combination of the three conveyance surfaces that help guide the consumable when gripped by that drivable conveyance roll to the exit seen in figure 2e. A motor 16 engages the member 8 and the fins 10 so as to provide rotation and allow the consumable onto the conveyor path (page 22). The housing defines a loading opening which allows replacement of the drum with the consumables. The housing has an opening which the consumable passes to allow testing. The housing comprises a display and user input (fig. 2). Further the conveyor and motor are capable of clockwise

and counterclockwise rotation to move the testing position and into a retraction position (page 22).

Response to Arguments

Applicant's arguments filed 2/26/10 have been fully considered but they are not persuasive. Applicant argues, "The Lundsgaard reference does not show or disclose any such conveyance gap defined between a drivable conveyance roll and a separate conveyance surface." The Examiner states that the conveyer grips the analytical consumable (14) because of gravity and the friction created between the conveyer and the consumable (fig 1). The conveyance surface separate from the drivable conveyance roll would be any surface that does not touch the drivable conveyance roll. In this instant case, figure 3 and figure 2d show the path in which the analytical consumable passes and then exits the device. For instance the surface directly to the left of the drum 4 which appears to be the cover housing for the buttons and display, this surface can be a conveyance surface because it helps guide the analytical consumable to the exit. Without the top surface and two side surfaces the consumable gripped by the conveyer would not be held in an upright position. So it is the combination of the three conveyance surfaces that help guide the consumable when gripped by that drivable conveyance roll to the exit seen in figure 2e.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAM P. SIEFKE whose telephone number is (571)272-1262. The examiner can normally be reached on M-F 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Samuel P Siefke/
Primary Examiner, Art Unit 1797